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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 SHANE WILSON,

12 Plaintiff,

13 v.

14 MICHAEL J. ASTRUE,  
15 Commissioner of Social Security,

16 Defendant.  
17

NO. EDCV 11-1023 AGR

**MEMORANDUM OPINION AND  
ORDER**

18 Shane Wilson ("Wilson") filed this action on July 21, 2011. Pursuant to 28  
19 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge on  
20 August 3 and 16, 2011. (Dkt. Nos. 9-10.) On March 21, 2012, the parties filed a  
21 Joint Stipulation ("JS") that addressed the disputed issues. The court has taken  
22 the matter under submission without oral argument.

23 Having reviewed the entire file, the court affirms the decision of the  
24 Commissioner.  
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## I.

**PROCEDURAL BACKGROUND**

On July 9, 2008, Wilson filed applications for disability insurance benefits and supplemental security income benefits, alleging an onset date of October 1, 2002. Administrative Record ("AR") 10, 112-28. The applications were denied initially and upon reconsideration. AR 57-60. Wilson requested a hearing by an Administrative Law Judge (ALJ). AR 76. On June 17, 2010, the ALJ conducted a hearing at which Wilson and a friend testified. AR 42-56. On August 5, 2010, the ALJ issued a decision denying benefits. AR 7-20. On June 3, 2011, the Appeals Council denied the request for review. AR 1-3. This action followed.

## II.

**STANDARD OF REVIEW**

Pursuant to 42 U.S.C. § 405(g), this court reviews the Commissioner's decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

"Substantial evidence" means "more than a mere scintilla but less than a preponderance – it is such relevant evidence that a reasonable mind might accept as adequate to support the conclusion." *Moncada*, 60 F.3d at 523. In determining whether substantial evidence exists to support the Commissioner's decision, the court examines the administrative record as a whole, considering adverse as well as supporting evidence. *Drouin*, 966 F.2d at 1257. When the evidence is susceptible to more than one rational interpretation, the court must defer to the Commissioner's decision. *Moncada*, 60 F.3d at 523.

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III.**DISCUSSION****A. Disability**

A person qualifies as disabled, and thereby eligible for such benefits, “only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” *Barnhart v. Thomas*, 540 U.S. 20, 21-22, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

**B. The ALJ’s Findings**

The ALJ found that Wilson met the insured status requirements through June 30, 2011. AR 12. He had a severe impairment of the musculoskeletal system. *Id.* Wilson had the residual functional capacity (“RFC”) to perform “a range of heavy exertional work” and was “limited to lifting and/or carrying 50 pounds frequently and 100 pounds occasionally.” AR 15. He could perform his past relevant work as a cashier and stocking clerk as generally performed. AR 19-20.

**C. Step Four of the Sequential Analysis**

Wilson contends the ALJ was required to obtain vocational expert testimony.

“At step four of the sequential analysis, the claimant has the burden to prove that [s]he cannot perform his prior relevant work ‘either as actually performed or as generally performed in the national economy.’” *Carmickle v. Comm’r of Soc. Sec. Admin*, 533 F.3d 1155, 1166 (9th Cir. 2008) (citation omitted). “Although the burden of proof lies with the claimant at step four, the ALJ still has a duty to make the requisite factual findings to support his conclusion.” *Pinto v. Massanari*, 249 F.3d 840, 844 (9th Cir. 2001). “This is done by looking at the ‘residual functional capacity and the physical and mental

1 demands' of the claimant's past relevant work." *Id.* at 844-45; see also 20 C.F.R.  
2 §§ 404.1520(e) & 416.920(e). When an ALJ relies on the DOT for a job  
3 description of a claimant's past relevant work, the ALJ must "definitively explain"  
4 any deviation between the Dictionary of Occupational Titles ("DOT") and the  
5 claimant's noted limitations. *Pinto*, 249 F.3d at 847.

6 Wilson argues that, based on his severe impairment of the musculoskeletal  
7 system, "it is reasonable to conclude that plaintiff suffers from severe pain as a  
8 result of this impairment and has a nonexertional limitation of pain." JS at 3.  
9 Therefore, Wilson argues the ALJ was required to obtain vocational expert  
10 testimony.

11 It cannot simply be assumed, based on a finding of a severe impairment at  
12 step two, that Wilson has a nonexertional limitation of pain. "The mere existence  
13 of an impairment is insufficient proof of a disability. 'A claimant bears the burden  
14 of proving that an impairment is disabling.' The applicant must show that he is  
15 precluded from engaging in not only his 'previous work,' but also from performing  
16 'any other kind of substantial gainful work' due to such impairment." *Matthews v.*  
17 *Shalala*, 10 F.3d 678, 680 (9th Cir. 1993) (citations omitted). Step two of the  
18 sequential analysis is a de minimis screening device. *Webb v. Barnhart*, 433  
19 F.3d 683, 687 (9th Cir. 2005). At step two "[a]n impairment or combination of  
20 impairments may be found 'not severe *only if* the evidence establishes a slight  
21 abnormality that has no more than a minimal effect on an individual's ability to  
22 work.'" *Id.* at 686-87 (emphasis in original, citation omitted). By contrast, step  
23 four seeks to determine whether a claimant can perform her past relevant work.  
24 *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

25 The Ninth Circuit has explained the difference between step two and the  
26 analogous step five determination of whether there is a significant number of jobs  
27 in the national economy that the claimant can perform. The step two and step  
28 five determinations "require different levels of severity of limitations such that the

1 satisfaction of the requirements at step two does not automatically lead to the  
2 conclusion that the claimant has satisfied the requirements at step five.” *Hoopai*  
3 *v. Astrue*, 499 F.3d 1071, 1076 (9th Cir. 2007). This reasoning applies equally to  
4 the difference between the step two and the step four determinations.

5 With respect to the issue of pain, Wilson does not challenge the ALJ's  
6 findings based on the relevant medical records and his assessment of the  
7 credibility of Wilson and the lay witnesses. Wilson argues that his applications  
8 also alleged asthma, hypertension, mood disorder and attention deficit  
9 hyperactivity disorder, which are “non-exertional limitations and findings that  
10 would affect what type of job in the national economy that plaintiff was capable of  
11 performing.” JS at 4.

12 However, the ALJ found that Wilson's asthma appeared to be controlled  
13 with medication and did not require any limitations. AR 13. Similarly, the ALJ  
14 found that Wilson's hypertension was often within normal limits or only slightly  
15 elevated, and did not require functional limitations. *Id.* With respect to Wilson's  
16 claimed mental impairments, the ALJ found no limitation as to activities of daily  
17 living, mild limitation in social functioning and concentration, persistence or pace,  
18 and no episodes of decompensation. AR 13-14. The ALJ found that Wilson's  
19 medically determinable mental impairments were, therefore, not severe and did  
20 not result in functional limitations. AR 14. Of these findings, Wilson challenges  
21 only the ALJ's rejection of Dr. Benson's psychiatric opinions. For the reasons set  
22 forth below, the ALJ's rejection of Dr. Benson's opinions is supported by  
23 substantial evidence.

24 Accordingly, Wilson's argument that the ALJ was required to obtain  
25 vocational expert testimony to assess nonexertional limitations must be rejected.  
26 Wilson further argues that the ALJ failed to obtain vocational expert testimony to  
27 classify his past relevant work. The ALJ properly relied upon Wilson's testimony  
28 and statements of record to find that Wilson's past relevant work was a cashier

1 and stocking clerk. AR 19, 161. Wilson does not identify any error in the ALJ's  
2 classification and the court has not discerned any such error.

3 **D. Treating Psychiatrist**

4 An opinion of a treating physician is given more weight than the opinion of  
5 non-treating physicians. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). To  
6 reject an uncontradicted opinion of a treating physician, an ALJ must state clear  
7 and convincing reasons that are supported by substantial evidence. *Bayliss v.*  
8 *Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005). When, as here, a treating  
9 physician's opinion is contradicted by another doctor, "the ALJ may not reject this  
10 opinion without providing specific and legitimate reasons supported by substantial  
11 evidence in the record. This can be done by setting out a detailed and thorough  
12 summary of the facts and conflicting clinical evidence, stating his interpretation  
13 thereof, and making findings." *Orn*, 495 F.3d at 632 (citations and quotation  
14 marks omitted). "When there is conflicting medical evidence, the Secretary must  
15 determine credibility and resolve the conflict." *Thomas v. Barnhart*, 278 F.3d 947,  
16 956-57 (9th Cir. 2002) (citation and quotation marks omitted).

17 Wilson contends the ALJ improperly rejected the opinion of Dr. Benson, a  
18 psychiatrist from the Parole Outpatient Clinic. Wilson was paroled on June 29,  
19 2008. AR 130. On November 5, 2008, Dr. Benson filled out a one-page form.  
20 Dr. Benson opined that Wilson was unable to work at all until possibly June 2011.  
21 AR 369. Wilson suffered from "disabling anxiety, depression, [and] ADHD", and  
22 his prognosis was "guarded." *Id.* On March 4, 2010, Dr. Benson wrote that  
23 Wilson is "fully disabled from a psychiatric point of view. He would miss > 7-10  
24 days per month of work." AR 406. Dr. Benson opined that Wilson was  
25 psychiatrically disabled for a minimum of 36 months. *Id.*

26 The ALJ found that Dr. Benson's opinions had no probative value because  
27 (1) his opinions "include[d] only conclusions regarding functional limitations  
28

1 without any rationale for those conclusions”; and (2) there was no objective  
2 evidence to support those functional limitations. AR 14.

3 A treating physician’s opinion as to the ultimate determination of disability  
4 is not binding on an ALJ. *McLeod v. Astrue*, 640 F.3d 881, 885 (9th Cir. 2011).  
5 The existence of disability “is an administrative determination of how an  
6 impairment, in relation to education, age, technological, economic, and social  
7 factors, affects ability to engage in gainful activity” and is reserved to the  
8 Commissioner. *Id.*

9 Dr. Benson’s opinions are not supported by any treatment notes, clinical  
10 findings or psychological test results. An ALJ may discount a treating physician’s  
11 opinion on that basis. *Orn*, 495 F.3d at 631. “[T]he ALJ need not accept the  
12 opinion of any physician, including a treating physician, if that opinion is brief,  
13 conclusory, and inadequately supported by clinical findings.” *Bray v. Comm’r of*  
14 *Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (citation omitted); *Batson*  
15 *v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004).

16 The ALJ gave great weight to the opinions of the examining psychiatrist,  
17 who examined Wilson on September 22, 2008 and April 2, 2009. AR 14, 337-43,  
18 370-76. An examining physician’s opinion constitutes substantial evidence when,  
19 as here, it is based on independent clinical findings. *Orn*, 495 F.3d at 631. On  
20 April 2, 2009, the psychiatrist diagnosed ADHD and bipolar disorder or mood  
21 disorder, not otherwise specified. AR 375. Based on the unremarkable mental  
22 status examination, he opined that Wilson had “no functional limitations from a  
23 psychiatric standpoint.” AR 376. Wilson made good eye contact, had good  
24 interpersonal contact, and showed no evidence of psychomotor agitation. AR  
25 373. His thoughts were coherent and organized, and he appeared to be of at  
26 least average intelligence. AR 373-74. His affect was full and animated. His  
27 speech was normal. He could perform simple math problems and followed the  
28 conversation well. AR 373-74. Previously in September 2008, the psychiatrist

1 found that Wilson was able to understand, remember and carry out both simple  
2 and complex instructions. He was slightly limited in his ability to maintain  
3 concentration, persistence or pace, and was minimally limited in all other areas.  
4 AR 342-43.

5 The ALJ articulated specific and legitimate reasons for discounting Dr.  
6 Benson's opinions. Wilson argues that the ALJ should have recontacted Dr.  
7 Benson to obtain additional evidence. Rejection of a treating physician's opinion  
8 does not by itself trigger a duty to contact the physician for more explanation.  
9 *McLeod*, 640 F.3d at 885. The ALJ made no finding that the evidence was  
10 ambiguous or that the record was inadequate to allow for proper evaluation. See  
11 *Mayes*, 276 F.3d at 459-60 ("An ALJ's duty to develop the record further is  
12 triggered only when there is ambiguous evidence or when the record is  
13 inadequate to allow for proper evaluation of the evidence."). Under these  
14 circumstances, the ALJ did not have a duty to recontact the physician. *McLeod*,  
15 640 F.3d at 885 n.3; *Bayliss*, 427 F.3d at 1217. The ALJ did not err.

16 **IV.**

17 **ORDER**

18 IT IS HEREBY ORDERED that the decision of the Commissioner is  
19 affirmed.

20 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
21 Order and the Judgment herein on all parties or their counsel.

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23 DATED: March 28, 2012

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ALICIA G. ROSENBERG  
United States Magistrate Judge